



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 20, 2016

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Zuzana O. Pacious *ZOP*
Audit Manager

By: Christopher Carrell *CC*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the
TeaPartyExpress.org (TPE) (A13-19)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Misstatement of Financial Activity

The Audit staff determined that, for 2011, TPE understated its receipts and ending cash-on-hand by \$133,667 and \$127,193, respectively. For 2012, TPE overstated its receipts by \$129,547; understated its disbursements by \$5,244; and overstated its ending cash-on-hand by \$65,710. Subsequent to audit notification, TPE amended its disclosure reports to materially correct the 2012 misstatements, however, did not correct the 2011 misstatements. TPE did not submit a response to the Interim Audit Report (IAR). In its response to the DFAR, TPE explained that during the time of activity it experienced challenges with data. TPE stated it was willing to amend reports as needed, however, has not done so as of yet. As such, TPE has not complied with the recommendation.

The Audit staff recommends that the Commission find that TPE misstated its financial activity for calendar years 2011 and 2012 as stated above.

Finding 2. Disclosure of Occupation/Name of Employer

A review of all contributions from individuals requiring itemization indicated that 2,896 contributions totaling \$549,694 lacked disclosure of occupation and/or name of employer. During the audit, TPE demonstrated "best efforts" to obtain, maintain, and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since TPE's corrective actions occurred after audit notification, this matter was included in the audit report. TPE did not submit a response to the IAR. In its response to the DFAR, TPE stated it has significantly improved its process for collecting and reporting occupation and name of employer information for contributions from individuals. The Audit staff considers this matter resolved.

The Audit staff recommends that the Commission find that TPE failed to disclose occupation and/or name of employer information from individuals totaling \$549,694.

Finding 3. Reporting of Apparent Independent Expenditures

A. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed independent expenditures totaling \$680,735 that TPE disclosed on Schedule E (Itemized Independent Expenditures). However, the Audit staff noted that TPE made additional expenditures totaling \$848,522 which appeared to be media-related independent expenditures that TPE disclosed on Line 21b (Operating Expenditures) and Line 29 (Other Disbursements). TPE did not respond to the IAR. In its response to the DFAR, TPE stated that the identified communications in question were for fundraising and not electioneering purposes. Absent evidence demonstrating that these expenditures are not independent expenditures and do not require reporting as independent expenditures, the Audit staff considers them independent expenditures.

The Audit staff recommends that the Commission find that TPE failed to properly disclose independent expenditures totaling \$848,522.

B. Failure to File 24/48-Hour Reports for Independent Expenditures

The Audit staff reviewed independent expenditures reported on Schedule E for 24/48-hour reports and determined that TPE did not file the required 24-hour reports totaling \$15,539 and 48-hour reports totaling \$12,464. For each of these communications, records indicate that TPE publicly disseminated the communications within the 24/48-hour reporting period.

In addition, the Audit staff identified \$848,522 in apparent independent expenditures for which TPE did not file 24 or 48-hour reports, as required. No documentation or information was available pertaining to the date of public dissemination for these communications; therefore, the Audit staff was not able to determine whether or not such reports were required to be filed. TPE did not respond to the IAR. In its response to the DFAR, TPE did not address the 24/48-hour reports specifically but stated that the bulk of the activity was

towards fundraising and that the identified communications were for fundraising and not electioneering purposes. The Audit staff considers this matter unresolved.

The Audit staff recommends that the Commission find that TPE did not file 24/48-hour reports totaling \$28,003 for independent expenditures reported on Schedule E. In addition, the Audit staff further recommends that the Commission find that TPE did not file 24/48-hour reports for additional apparent independent expenditures totaling \$848,522.

Finding 4. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. TPE made 340 expenditures totaling \$3,792,648 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements). Of this total amount, there were 237 disbursements totaling \$2,302,864 for which TPE did not provide invoices and the associated direct mail piece for each of the disbursements. Additionally, there were 103 disbursements totaling \$1,489,784 paid to direct mail vendors for which TPE provided no information about the direct mail communications. TPE did not respond to the IAR. In its response to the DFAR, TPE stated that it has provided copies of invoices and payments made but experienced challenges collecting further information from its consultants and email vendor. As such, the Audit staff considers this matter unresolved.

The Audit staff recommends that the Commission find that TPE did not provide the necessary records pertaining to disbursements totaling \$3,792,648.

Finding 5. Failure to Itemize Debt and Obligations

During audit fieldwork, the Audit staff noted that TPE did not disclose debts and obligations totaling \$310,561. TPE did not submit a response to the IAR. In its response to the DFAR, TPE explained that during the time of activity it experienced challenges with data. TPE stated it was willing to amend reports as needed, however, has not done so as of yet. As such, TPE has not complied with the recommendation.

The Audit staff recommends that the Commission find that TPE failed to itemize debts and obligations totaling \$310,561.

TPE did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Christopher Carrell or Zuzana Pacious at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on TeaPartyExpress.org
- LRA 995 (Tea Party Express) – ADRM Cmts (Final)

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the TeaPartyExpress.org

(January 1, 2011 – December 31, 2012)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

TeaPartyExpress.org is an unauthorized, qualified, non-party political action committee headquartered in Willows, California. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

Receipts

o Contributions from Individuals	\$ 10,135,860
o Refunds of Contributions Made to Federal Candidates	\$2,500
o Other Receipts	32,666
Total Receipts	\$ 10,171,026

Disbursements

o Operating Expenditures	\$ 8,320,177
o Contributions to Federal Candidates/Other Committees	259,500
o Independent Expenditures	680,735
o Contribution Refunds	19,685
o Other Disbursements	77,827
Total Disbursements	\$ 9,357,924

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation/Name of Employer (Finding 2)
- Reporting of Apparent Independent Expenditures (Finding 3)
- Recordkeeping for Communications (Finding 4)
- Failure to Itemize Debts and Obligations (Finding 5)

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on the TeaPartyExpress.org

(January 1, 2011 – December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the TeaPartyExpress.org² (TPE), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the consistency between reported figures and bank records;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of independent expenditures;
4. the disclosure of debts and obligations pertaining to independent and apparent independent expenditures;
5. the completeness of records; and
6. other committee operations necessary to the review.

² The committee's name during the audit period was Our Country Deserves Better TeaPartyExpress.Org and was subsequently changed on May 15, 2015.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	August 18, 2008
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Willows, California	
Bank Information	
• Bank Depositories	Three
• Bank Accounts	Three Checking; One Savings
Treasurer	
• Treasurer When Audit Was Conducted	Kelly Lawler
• Treasurer During Period Covered by Audit	Betty Presley (1/1/2011 – 4/7/2011) Kelly Lawler (4/8/2011 – Present)
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$20,252
Receipts	
o Contributions from Individuals	10,135,860
o Refunds of Contributions Made to Federal Candidates/Other Committees	2,500
o Other Receipts	32,666
Total Receipts	\$10,171,026
Disbursements	
o Operating Expenditures	8,320,177
o Contributions to Federal Candidates/Other Committees	259,500
o Independent Expenditures	680,735 ³
o Contribution Refunds	19,685
o Other Disbursements	77,827
Total Disbursements	\$9,357,924
Cash-on-hand @ December 31, 2012	\$833,354

³ This amount, as well as the amount for operating expenditures and other disbursements, may change as a result of the Commission's final consideration of the audit Finding 3. (See p. 9.)

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of TPE's reported figures with its bank records indicated that in 2011, receipts and ending cash-on-hand were understated by \$133,667 and \$127,193, respectively. In 2012, beginning cash-on-hand was understated by \$127,193, receipts were overstated by \$129,547, disbursements were understated by \$5,244, and ending cash-on-hand was overstated by \$65,710. Subsequent to audit notification, TPE amended its disclosure reports and partially corrected certain misstatements.

TPE did not submit a response to the Interim Audit Report. The Audit staff considers this matter unresolved. (For more detail, see p. 5.)

Finding 2. Disclosure of Occupation/Name of Employer

A review of all contributions from individuals requiring itemization indicated that 2,896 contributions totaling \$549,694 lacked disclosure of occupation/name of employer. During the audit, TPE demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since TPE's corrective action occurred after audit notification, the matter was included in the Interim Audit Report.

TPE did not submit a response to the Interim Audit Report, however, the Audit staff considers this matter resolved. (For more detail, see p. 7.)

Finding 3. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed independent expenditures totaling \$680,735 that TPE disclosed on Schedule E (Itemized Independent Expenditures). However, the Audit staff identified additional expenditures totaling \$848,522 (845,310 + 3,212) which appeared to be media-related independent expenditures that TPE disclosed on Line 21b (Operating Expenditures) and Line 29 (Other Disbursements).

Of the \$680,735 independent expenditures reported on Schedule E, TPE did not file 24/48-hour reports for seven expenditures totaling \$28,003. Additionally, of the \$848,522 disclosed as operating expenditures and other disbursements which appeared to be independent expenditures, TPE did not file any 24/48-hour reports.

TPE did not submit a response to the Interim Audit Report. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considers these expenditures to be independent expenditures. (For more detail, see p. 9.)

Finding 4. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. TPE reported 340 (237+103) expenditures totaling \$3,792,648 (2,302,864 + 1,489,784), on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements) with purposes such as "Postage & Delivery", "Printing & Mailshop" or "PAC Fundraising Postage & Delivery." Documentation provided by TPE was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating or other expense.

TPE did not submit a response to the Interim Audit Report. Absent the further documentation as recommended, the Audit staff considers the documentation provided to be insufficient. (For more detail, see p. 13.)

Finding 5. Failure to Itemize Debts and Obligations

During audit fieldwork and in the course of review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations pertaining to these expenditures totaling \$310,561.

TPE did not submit a response to the Interim Audit Report. Absent the filing of amended reports to include the debts owed, the Audit staff considers the matter unresolved. (For more detail, see p. 15.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of TPE's reported figures with its bank records indicated that in 2011, receipts and ending cash-on-hand were understated by \$133,667 and \$127,193, respectively. In 2012, beginning cash-on-hand was understated by \$127,193, receipts were overstated by \$129,547, disbursements were understated by \$5,244, and ending cash-on-hand was overstated by \$65,710. Subsequent to audit notification, TPE amended its disclosure reports and partially corrected certain misstatements.

TPE did not submit a response to the Interim Audit Report. The Audit staff considers this matter unresolved.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled TPE's reported financial activity with its bank records for calendar years 2011 and 2012. The reconciliation determined that TPE misstated receipts and ending cash-on-hand for 2011, and receipts, disbursements and ending cash balance for 2012. The following charts outline the discrepancies between TPE's disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$21,661	\$20,252	\$1,409 Overstated
Receipts	\$3,668,329	\$3,801,996	\$133,667 Understated
Disbursements	\$3,617,405	\$3,622,469	\$5,064 Understated
Ending Cash Balance	\$72,585	\$199,779	\$127,194

@ December 31, 2011			Understated
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The beginning cash balance was overstated by \$1,409 and is unexplained, but likely resulted from prior-period discrepancies.

The understatement of receipts resulted from the following:

• Unitemized contributions from individuals, not reported on TPE's 2011 Mid-Year report	+	\$103,315
• Returned contributions not reported as negative receipts	-	1,015
• Unexplained differences	+	31,367
Net Understatement of Receipts	+	<u>\$133,667</u>

The \$127,193 understatement of the ending cash balance resulted from the misstatements described above.

2012 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$72,586	\$199,779	\$127,193 Understated
Receipts	\$6,498,577	\$6,369,030	\$129,547 Overstated
Disbursements	\$5,730,211	\$5,735,455	\$5,244 Understated
Ending Cash Balance @ December 31, 2012	\$899,064	\$833,354	\$65,710 Overstated

The overstatement of receipts resulted from the following:

• Contributions from individuals not traced to bank	-	\$125,487
• Credit card contribution chargebacks for previously reported contributions	-	4,060
Overstatement of Receipts	-	<u>\$129,547</u>

The understatement of disbursements resulted from the following:

• Disbursements clearing bank, not reported	+	\$350,475
• Reported disbursements not traced to bank	-	341,136
• Credit card contribution chargebacks reported as disbursements	-	4,060
• Unexplained differences	-	35
Net Understatement of Disbursements	+	<u>\$5,244</u>

The majority of disbursements TPE failed to report cleared the bank in November 2012 and should have been disclosed on TPE's 2012 Post-General report. During the same period, TPE reported a single transaction of \$334,091 which did not clear the bank. Based on the available information, the Audit staff was unable to determine whether the reporting of the single transaction of \$334,091 was in relation to those disbursements identified as not reported on the 2012 Post-General report.

The net overstatement of the ending cash balance resulted from the misstatements described above, as well as from a \$58,112 mathematical discrepancy in calculating the ending cash balance.

Subsequent to audit notification, TPE filed amended 2012 reports in April 2014. The Audit staff analyzed the amended information and determined that the amendments corrected some but not all of the identified misstatements.

B. Interim Audit Report and Audit Division Recommendation

The Audit staff discussed the misstatements for 2011 and 2012 with TPE's representative during the exit conference and provided copies of relevant work papers detailing the remaining misstatements. TPE provided no comments related to this matter in its response to the exit conference.

The Interim Audit Report recommended that TPE file an amended 2011 Mid-Year Report to disclose the additional Unitemized Contributions from Individuals totaling \$103,315 on Line 11(a)(ii). The Interim Audit Report further recommended that the most recent disclosure report be amended to show the adjusted cash-on-hand balance with an explanation that it resulted from audit adjustment from a prior period.

C. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, nor were amended disclosure reports filed. The Audit staff considers this matter unresolved.

Finding 2. Disclosure of Occupation/Name of Employer

Summary

A review of all contributions from individuals requiring itemization indicated that 2,896 contributions totaling \$549,694 lacked disclosure of occupation/name of employer. During the audit, TPE demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since TPE's corrective action occurred after audit notification, the matter was included in the Interim Audit Report.

TPE did not submit a response to the Interim Audit Report, however, the Audit staff considers this matter resolved.

Legal Standard

A. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the following information:

- the contributor's full name and address (including zip code);
- the contributor's occupation and the name of his or her employer;
- the date of receipt (the date the committee received the contribution);
- the amount of the contribution; and

- the calendar year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) and 11 CFR §§ 100.12 and 104.3(a)(4)(i).

B. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i) and 11 CFR §104.7(a).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria.

- All written solicitations for contributions included:
 - a clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - the statement that such reporting is required by Federal law.
 - Note: The request and statement must appear in a clear and conspicuous manner on any response material included in a solicitation.
- Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

A review of all itemized contributions from individuals indicated that 2,896 contributions totaling \$549,694, or 25 percent of the dollar value of individual contributions required to be itemized by TPE, lacked disclosure of occupation/name of employer. The contributor entries with missing information were either disclosed with the notation "n/a"; "Best Efforts Made"; or were left blank on the Schedules A (Itemized Receipts).

During audit fieldwork, the Audit staff reviewed the receipt documents provided by TPE to determine if TPE had utilized "best efforts" to obtain, maintain and submit the missing information. TPE presented 391 follow-up letters sent to contributors requesting the occupation/name of employer. In response to these letters, TPE provided the necessary occupation/name of employer information obtained from 137 individuals. For the remaining 254 individuals, no further occupation/name of employer information was provided. The Audit staff reviewed TPE's disclosure reports filed after the audit notification and determined that TPE amended its reports to materially disclose the missing occupation/name of employer information.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to the TPE representative at the exit conference and noted that TPE has materially resolved this matter and no further action was required.

However, because TPE's corrective action was taken after the audit notification, the matter was presented in the Interim Audit Report.

The Interim Audit Report recommended that TPE provide any comments it deemed necessary with respect to this matter.

C. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, however, the Audit staff considers this matter resolved.

Finding 3. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed independent expenditures totaling \$680,735 that TPE disclosed on Schedule E (Itemized Independent Expenditures). However, the Audit staff identified additional expenditures totaling \$848,522 (\$845,310 + 3,212) which appeared to be media-related independent expenditures that TPE disclosed on Line 21b (Operating Expenditures) and Line 29 (Other Disbursements).

Of the \$680,735 independent expenditures reported on Schedule E, TPE did not file 24/48-hour reports for seven expenditures totaling \$28,003. Additionally, of the \$848,522 disclosed as operating expenditures and other disbursements which appeared to be independent expenditures, TPE did not file any 24/48-hour reports.

TPE did not submit a response to the Interim Audit Report. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considers these expenditures to be independent expenditures.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context

can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or

- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required for each additional \$1,000 that aggregates. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. CFR §104.14(b)(1).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure the reporting completeness and accuracy of independent expenditures that TPE disclosed

on Schedule E. The Audit staff noted that TPE correctly disclosed independent expenditures totaling \$680,735 on Schedule E, however, made additional media-related expenditures totaling \$848,522 and disclosed them as operating expenditures or other disbursements that may be considered independent expenditures. A breakdown of the analysis for these expenditures is as follows:

a) Independent Expenditures Reported as Operating Expenditures and Other Disbursements (Associated Invoice Provided)

TPE made 235 apparent independent expenditures totaling \$845,310 for which it provided supporting documentation such as invoices, scripts, ads, solicitation letters, etc.

- i) For apparent independent expenditures totaling \$829,427, the communication contained language expressly advocating the election or defeat of clearly identified candidates. 11 CFR §100.22(a). This amount mostly consists of costs associated with 17 fundraising letters each containing express advocacy.
- ii) For apparent independent expenditures totaling \$15,883, the communication could only be interpreted as containing the advocacy of election or defeat of one clearly identified candidate. 11 CFR § 100.22 (b).

b) Independent Expenditures Reported as Operating Expenditures and Other Disbursements (No Invoice Associated)

TPE made fifteen apparent independent expenditures which were reported as operating expenditures or other disbursements. The Audit staff considers the disbursements to be apparent independent expenditures for the following reasons:

- i) **Communications Without Invoice** - TPE provided eight telecommunication scripts; however, the Audit staff was not able to associate these scripts with any invoices or with a particular disbursement. Therefore, the amount spent for these eight telecommunications scripts is unknown. These scripts contain express advocacy language by calling for the "defeat of Barack Obama", "elect a new president", or "put Romney and Paul in White House." 11 CFR §100.22(a).
- ii) **Details on Invoice** - There were seven independent expenditure emails totaling \$3,212 that were supported by an invoice, however, the invoice could not be traced to the disbursement database or bank.⁴ Five of these independent expenditure emails totaling \$2,288 contained express advocacy language calling for the "defeat of Dick Lugar." 11 CFR §100.22(a). Two independent expenditure emails totaling \$924 could only be interpreted as containing the advocacy of election or defeat of one clearly identified candidate. 11 CFR § 100.22 (b).

⁴ Discrepancies between actual and reported disbursements are discussed in Finding 1. (See p.5.)

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented the schedule of disclosure errors for apparent independent expenditures. The TPE representative had no immediate comments, however, in response to the exit conference, provided additional e-mail communications and invoices which the Audit staff reviewed and incorporated into this finding.

The Interim Audit Report recommended that TPE provide:

- Documentation and evidence that apparent independent expenditures noted above did not require reporting as independent expenditures. Evidence should have included invoices with the corresponding communications and, where applicable, TPE's payment information.
- Absent such evidence, TPE should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and should have submitted revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, nor were amended disclosure reports filed. Absent compliance with the recommendation above, the Audit staff considers these expenditures to be independent expenditures.

B. Failure to File 24/48 Reports for Independent Expenditures

1. Facts

The Audit staff reviewed 24/48-hour reports filed by TPE, as well as the apparent independent expenditures noted above, to determine whether additional reporting of a 24/48-hour report was required.⁵ The following was noted:

a) Independent Expenditures Reported on Schedule E (Independent Expenditure Schedule)

TPE failed to file 24-hour reports totaling \$15,539 and 48-hour reports totaling \$12,464. For each of these communications, records indicate that TPE publicly disseminated the communication within the 24/48-hour reporting period.

b) Apparent Independent Expenditures Reported as Operating Expenditures and Other Disbursements

For apparent independent expenditures totaling \$848,522 (845,310 + 3,212) noted above, TPE did not file 24 or 48-hour reports. No documentation or information was available pertaining to the date of public dissemination for these communications; therefore, the Audit staff was not able to determine whether or not such reports were required to be filed.

⁵ The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24/48-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date or date of incurrence to determine if a 24/48-hour report was required.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided the TPE representative with a schedule of undisclosed 24/48-hour reports. The TPE representative did not provide any comments at that time.

The Interim Audit Report recommended that TPE provide documentation to support that the 24/48-hour reports, totaling \$845,310, were timely filed or that the reports were not required. Such documentation should have included support for the dates of public dissemination to determine whether a filing of a 24/48-hour report was required.

3. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considers these expenditures above as requiring 24/48-hour reports.

Finding 4. Recordkeeping for Communications

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. TPE reported 340 (237+103) expenditures totaling \$3,792,648 (2,302,864 + 1,489,784), on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements) with purposes such as "Postage & Delivery", "Printing & Mailshop" or "PAC Fundraising Postage & Delivery". Documentation provided by TPE was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating or other expense.

TPE did not submit a response to the Interim Audit Report. Absent the further documentation as recommended, the Audit staff considers the documentation provided to be insufficient.

Legal Standard

- A. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).
- B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. TPE made 340 expenditures totaling \$3,792,648 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements).

The Audit staff's analysis of the documentation that was provided, including the reconciled committee's database, invoices, and bank statements, determined the following:

- **Disbursements – No Invoices or Copies of Communications Provided (\$2,302,864)**

Disbursements totaling \$2,302,864 were paid to direct mail vendors and reflected on the committee's database and/or disclosed on Schedule B with purposes such as "Postage & Delivery", "Printing & Mailshop", or "PAC Fundraising Postage & Delivery." The Audit staff requested copies of the invoices and the associated direct mail piece for each of the disbursements. To date, these invoices or other information to associate the payments to these communications have not been provided.

- **Disbursements – Invoices Provided - Not Able to Associate with Copies of Communications (\$1,489,784)**

Disbursements totaling \$1,489,784 were paid to direct mail vendors and were reflected on the TPE's database and/or disclosed on Schedule B with purposes such as "email newsletter", "PAC online advertising" or "PAC fundraising emails." For these disbursements, TPE provided copies of invoices as well as cancelled checks but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify TPE's reporting itemization of these amounts as operating expenditures or other disbursements. The Audit staff requested information that would allow an association between these invoices and the communications, however, TPE has not responded to that request.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented a schedule of the disbursements for which further records were necessary to verify the accuracy of TPE's reporting. TPE representatives provided additional e-mail communications, invoices, and two ads which the Audit staff reviewed and incorporated into this finding. The Audit staff provided an updated schedule of disbursements for which further records were necessary to verify the accuracy of TPE's reporting and requested that TPE provide additional invoices and information that would associate each invoice to the corresponding communication. TPE representatives provided an additional e-mail stating that TPE would provide additional documents but has not done so to date.

The Interim Audit Report recommended that TPE provide, in sufficient detail, the necessary information from which the reported operating expenditures and other disbursements totaling \$3,792,648 may be verified or explained. Such records were to include:

1. Copies of invoices and identification of the associated communications, and
2. If the communication has already been provided, information associating each communication with an invoice(s).

C. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report. Absent the further documentation as recommended, the Audit staff considers the documentation provided to be insufficient.

Finding 5. Failure to Itemize Debt and Obligations

Summary

During audit fieldwork and in the course of review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations pertaining to these expenditures totaling \$310,561.

TPE did not submit a response to the Interim Audit Report. Absent the filing of amended reports to include the debts owed, the Audit staff considers the matter unresolved.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, and in course of the review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations owed to 19 vendors totaling \$310,561.⁶ The amounts were outstanding for a range of between 34 to 207 days and were mostly for advertising, media, printing, and mailing services. The incorrect disclosure consists of vendors with debts not reported as well as vendors for which the reported debt amount was understated.

⁶ Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to the TPE representative at the exit conference and provided schedules detailing the debt amounts which were incorrectly reported during the audited period. The TPE representative offered no comments in response to the exit conference.

The Interim Audit Report recommended that TPE provide documentation demonstrating that these expenditures did not require reporting or were properly reported on Schedules D. Absent such documentation, TPE should have amended its reports to correct the disclosure of debts and obligations totaling \$310,561.

C. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, nor were amended disclosure reports filed. Absent the filing of amended reports to include the debts owed, the Audit staff considers the matter unresolved.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

OCT 18 2016

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Adav Noti *AN*
Associate General Counsel
Policy Division

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Joshua Blume *JB*
Attorney

SUBJECT: Audit Division Recommendation Memorandum on TeaPartyExpress.Org (LRA 995)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Audit Division Recommendation Memorandum ("ADRM") on TeaPartyExpress.Org ("the Committee"). The ADRM discusses five findings in the Draft Final Audit Report: Misstatement of Financial Activity (Finding 1); Disclosure of Occupation/Name of Employer (Finding 2); Reporting of Apparent Independent Expenditures (Finding 3); Recordkeeping for Communications (Finding 4); and Failure to Itemize Debt and Obligations (Finding 5).

The ADRM also notes the Committee's response to Finding 3, in which it states that communications identified as apparent independent expenditures in that finding were designed for fundraising and not for electioneering purposes. The Audit Division states in the ADRM that it considers the communications to be independent expenditures absent evidence demonstrating that

they are not, thereby rejecting the Committee's implied argument that the identified communications should not be considered independent expenditures because their purpose was to raise funds.

We concur with the Audit Division's conclusion and comment here solely for the purpose of expounding briefly upon the reasons for our agreement. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

II. FUNDRAISING COMMUNICATIONS CAN BE INDEPENDENT EXPENDITURES

Although the Committee implies that communications intended to raise funds cannot qualify as independent expenditures even if they constitute express advocacy, that suggestion has no basis in law. The Federal Election Campaign Act of 1971, as amended, defines the term "independent expenditure," as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with that candidate. 52 U.S.C. § 30101(17). The Commission's regulatory definition of "express advocacy" also is not made to depend upon the intentions of those who distribute the communication, but is based upon an analysis of the content of the communication itself. See 11 C.F.R. § 100.22. Indeed, the Commission and the courts have made clear that the extrinsic intentions of a communication's authors are not relevant to determining whether the communication is an independent expenditure. See Explanation and Justification for Final Rule on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35295 (July 6, 1995) (subjective intent of speaker not relevant consideration in applying section 100.22(b)); see also *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 467-69 (2007) (declining to adopt test turning on speaker's intent to affect election for determining whether communications constitute functional equivalent of express advocacy in electioneering communications context).

Consistent with this reasoning, the Commission has found in two previous audits that fundraising solicitations constituting express advocacy should be reported as independent expenditures. In an audit of the National Campaign Fund, the Commission found that 41 fundraising communications constituted express advocacy and therefore were independent expenditures. See Commission Certification of [ADRM], The National Campaign Fund, A09-26, August 17, 2012. In the audit of the Legacy Committee PAC, the Commission found that 36 fundraising communications constituted express advocacy and therefore were independent expenditures. See Commission Certification of [ADRM], The Legacy Committee Political Action Committee, A09-22, June 11, 2012. The Commission arrived at a like conclusion in a previous enforcement matter involving fundraising letters. See MUR 5809 (Christian Voter Project) (committee failed to file independent expenditure notices for the costs of fundraising letters that expressly advocated the election or defeat of candidates). To our knowledge, the Commission has never indicated that a communication otherwise qualifying as an independent expenditure might

be exempt from disclosure as a matter of law because it was intended to raise funds.¹

¹ In the audit of Rightmarch.com PAC, Inc. (A09-25), the Commission divided 3-3 on a proposed finding that the committee's fundraising communications were independent expenditures. *See* Final Audit Report of the Commission on RIGHTMARCH.COM PAC INC, at 17-18 (approved Feb.14, 2013). The dispute in that matter, however, concerned whether the content of the communications could reasonably be interpreted as something other than express advocacy as a matter of fact based on the overall fundraising context of the communications, as well as other factors, such as the absence of a reference to elections in the communications. *Id.*, at 16.